

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO.972 OF 2005
IN
SUIT NO.1470 OF 2004

WITH

NOTICE NO.1129 OF 2005
IN
CHAMBER SUMMONS NO.972 OF 2005
IN
SUIT NO.1470 OF 2004

Videocon Properties Ltd. & Anr. ..Plaintiffs.

V/s.

Layer Exports Pvt.Ltd. ..Defendant.

Mr.Virag Tulzapurkar i/b DSR Associates for
Plaintiffs.

Mr.T.N.Subramaniam with Mr. Vineet Naik i/b W.Gandhy
& Co. for defendant.

CORAM: A.M.KHANWILKAR, J

DATE : SEPTEMBER 12, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. This Chamber Summons is taken out by the defendant for declaration that the defendant has complied with all the conditions mentioned in

clause-3 of the Consent terms dated 4th May, 2005 and record the same as certified. This application is made in terms of provisions of Section 47 of the Code of civil Procedure read with Order 21 Rule 2. The parties entered into consent terms in Suit No.1470 of 2004. As a consequence of which, suit was decreed in terms of Consent Terms dated 4th May, 2005. The relevant clauses for our purpose read thus:

"(1)(a) Agreed, ordered and decreed that towards the full and final settlement of the Plaintiff's suit claim the defendant undertakes to pay and do pay to the Plaintiffs a sum of Rs.18,00,00,000/- (Rupees Eighteen Crores only) with interest thereon @ 18% p.a. from 90 days from the date hereof till payment or relisation."

(b) The Defendant do pay the said sum to the Plaintiffs within 90 days from the date of these Consent Terms and upon receipt thereof by the Plaintiffs by the said date the same shall constitute full and final satisfaction of the suit claim."

"(3)(a) Towards payment of the said sum of Rs.18 Crores, the Defendant has offered to have transferred to the Plaintiffs the commercial premises situated on the ground floor admeasuring about 11300 sq. ft. saleable area equivalent to about 7500 sq.ft carpet area in the building known as Aman Chambers formerly known as Kodak House/Trambak House situated at Veer Savarkar Marg, on plot Nos. 13,14, 15 and 16 situated at the junction of Forty feet Municipal Road and Cadell Road in the city of Bombay admeasuring 2792.64 sq. yards or thereabouts equivalent to 2335.21 sq.mtrs. or thereabouts bearing New

Survey No.1707-1714 (Part) and Cadastral Survey No.1098 of Lower Parel Division, New Mahim Division, being Final Plot No. 1121 of Town Planning Scheme, Bombay City No.IV (Mahim area) bearing Municipal 'G' Ward Nos. 2981(7), 2881(8), 2959(2) and 2959(3), Street Nos. 426F, 426G, 424A and 424B and now in G Ward Nos.2959(2-3) and 2961(8) and Street Nos.483,424, 426F and 426G together with structure standing thereon previously known as "Kodak House" and as "Trambak court" and now known as "Aman Chambers" and bounded as follows :-

On or towards the North East: By 40 feet Municipal Road

On or towards the South West: By Municipal Plot Nos.11 and 12 bearing Cadastal Survey No.1646(Final Plot No.1122)

On or towards the North West: By Cadell Road(Veer Savarkar Marg) and

On or towards the South East: By Municipal strip of land Bearing Cadastral Survey No.1090 of Mahim Division.

with a right to construct 1/3rd area on the ground floor as loft floor in the ground floor Premises free from all encumbrances (hereinafter the said 11,300 sq.ft.saleable area and the right to construct 1/3rd area as the loft floor is collectively referred to as the 'Premises'). Provided however that the Defendant shall within a period of 90 days from the date of these consent terms, to the satisfaction of the Plaintiffs:-

- (i) Save and except the pending Writ Petition No.537 of 1994, make out a marketable title to the Premises free from all encumbrances whatsoever in the hands of M/s. Trambak Homes Pvt.Ltd. and M/s.Rhiday Real Estate Developers Pvt.Ltd. by furnishing an unconditional title certificate from M/s.Kanga & Co. certifying that the title is clear and marketable;

- (ii) Obtain permission from B.M.C. and any other concerned authorities to construct 1/3rd of the area of ground floor as loft floor in the ground floor Premises and
- (iii) Obtain approval from the erstwhile Global Trust Bank (now Oriental Bank of Commerce) for the sale of the aforesaid Premises in favour of the Plaintiffs or its nominee.

The premises are delineated on the plan hereto annexed by red colour boundary line.

The transfer, if taken by the Plaintiffs, shall be at a consideration of Rs.18 crores and the consideration shall be and stand set off and adjusted against the sum of Rs.18 crores payable by the Defendant to the Plaintiffs under clause 1 and 2 above, so that the Plaintiffs shall not make any separate payment to the Defendant for the transfer.

- (b) Upon the Defendant complying with the provisions of clause 3 to the satisfaction of the Plaintiffs, the Defendant shall and do procure and undertake to procure the sale and transfer of the aforesaid Premises with a right to construct 1/3 rd of area of the ground floor as loft floor in favour of the Plaintiffs or its nominees from the owners of the Premises i.e. M/s.Trambak Homes Pvt.Ltd. and M/s.Rhiday Real Estate Developers Pvt.Ltd. The Defendants shall and do cause and undertake to cause the said M/s Trambak Homes Pvt.Ltd. and M/s Rhiday Real Estate Developers Pvt.Ltd do execute and undertake to execute the necessary Deed of Transfer in favour of the Plaintiffs or their nominee/s and the said M/s.Trambak Homes Pvt.Ltd. and M/s.Rhiday Real Estate Developers Pvt.Ltd. shall and do complete and undertake to complete the sale and execute such other documents as may be necessary or required by the Plaintiffs to perfect the Plaintiff's title to the Premises. The said M/s.Trambak Homes Pvt.ltd and M/s. Rhideay Real Estate

Developers Pvt.Ltd. shall and do assure and undertake to do everything to ensure the registration of the Deed of Transfer in favour of the Plaintiffs or its nominee. The Transfer Deed shall be executed as provided herein.

- (c) The said Trambak Homes Pvt.Ltd. and Rhiday Real Estate Developers Pvt.Ltd. have executed an irrevocable Power of Attorney in favour of Mr. V.N.Dhoot and Mr.S.M.Hegde, empowering them to execute the Deed of Transfer. Trambak Homes Pvt.Ltd. and Rhiday Real Estate Developers Pvt.Ltd. undertake not to revoke the Power of Attorney till completion of the sale and the transfer of the premises to the Plaintiff/nominees, and/or realisation of the amounts mentioned herein.
- (d) The Defendant, Trambak Homes Pvt.Ltd and Rhiday Real Estate Developers Pvt.Ltd. jointly and severally do hereby indemnify and keep indemnified the Plaintiffs and their nominee and/or the owners of the Premises, against any claim, demand, loss, damage which may occur as a result of the Writ Petition No.537 of 1994 being decided in favour of the Petitioner therein."

"(5)(b)It is agreed that at the expiry of 90 days from the date of these Consent Terms and in the event if the Plaintiffs are not satisfied with the compliance by the Defendants of the Provision of clause 3 herein, the Plaintiffs are entitled to encash the said cheques without reference to the Defendant and Defendant shall not raise and undertakes not to raise any dispute in respect thereof. The Defendant undertakes to have the cheques honoured and paid on first presentment thereof. It is expressly agreed that the cheques are all subject to realisation and the Defendant's obligation to make payment continues till the entire sum of Rs.18 crores is actually received by the Plaintiffs."

"(9)(a) In the event the transfer of the Premises does not take place as stated herein, the Plaintiffs shall surrender the possession of the Premises to Trambak Homes Pvt.Ltd. and Rhiday Real Estates Pvt.Ltd. only upon the Plaintiffs decreetal dues being received in full.

(b) In the event of the Defendants failing to pay the sum of Rs.18 Crores in 90 days from the date of these terms or in the event of the transfer of the Premises not being completed in one week of the Plaintiffs being satisfied of the compliance by the Defendants of the provision of clause 3 herein, the Plaintiffs shall be entitled to execute the decree in terms of clause (1) above forthwith and in/ towards execution, to proceed against the premises mentioned in clause (3) and in clause (8) above as also in any other manner permissible in law."

"(13) Decree in terms of Consent Terms."

3. According to the defendant they have complied with their obligations in terms of clause 3(a-i), 3(a-ii) and 3(a-iii). In so far as Title Certificate is concerned, the same is issued by M/s. Kanga and company, which is Exh.1 at page 62 and Report on Title at page 66. In so far as requirement of clause 3(a-ii) is concerned, the same is complied in terms of the permission granted by the Corporation vide letter dated 28th April, 2005 at page 56 read with

approved plan of the Corporation. In so far as the requirement under clause 3(a-iii) is concerned, even that has been complied, as can be seen from the letter issued by the Oriental Bank of Commerce dated 23rd July, 2005 and 30th July, 2005 respectively at pages 63 and 64. On the above basis, it is contended that the defendant has complied all its obligations under the Consent Terms. However, the plaintiffs have, for untenable reasons, taken stand that the compliance is not according to the understanding arrived at between the parties and to the satisfaction of the plaintiffs. According to the defendant, it is necessary for this court to consider whether the stand taken by the plaintiffs can be sustained and instead hold that the defendant has complied with the obligations under clauses 3(a-i), 3(a-ii) and 3(a-iii) respectively and therefore, to record that the Consent Terms dated 4th May, 2005 as certified.

4. Counsel appearing for the plaintiffs, on the other hand, contends that the relief claimed in this application cannot be granted. According to him, the Consent Terms are in two parts. First part is clause-(1) whereunder, the parties agreed and invited decree in terms of clause 1(a). The later part of

the consent terms was only in the nature of offer given to the plaintiffs by the defendant in lieu of payment of Rs.18 Crores to be paid under clause (1) of the Consent Terms. According to Mr.Tulzapurkar, Counsel for the plaintiffs, it was open to the plaintiffs to accept or refuse the offer. That no obligation has been cast on the plaintiffs to accept the offer as it is unless the Plaintiffs were satisfied that conditions in clause 3(a-i), 3(a-ii) and 3(a-iii) are fully satisfied by the defendant. Mr. Tulzapurkar then contends that on the facts of the present case, defendant has not fully complied with the obligations under clause 3 referred to above and in any case not to the satisfaction of the plaintiffs, for which reason, the plaintiffs cannot be forced to accept the offer under the Consent Terms.

5. Mr. Tulzapurkar has placed reliance on the decisions reported in 2001(7) SCC 617, in the case of **V.Pechimuthu V/s. Gowrammal**, AIR 1963 SC 1182 in the case of **K.Simrathmull V/s.Nanjalingiah Gowder** and in the case of **Shanmugam Pillai V/s. Annalakshmi Ammal** reported in AIR 1950 FC 38 to support his contention that the plaintiffs cannot be forced to accept the offer given in terms of consent terms even though the

conditions under the Consent Terms are fully satisfied.

6. Having considered the rival submissions, the first question that arises for my consideration is: whether the Consent Terms is in two parts as is submitted on behalf of the plaintiffs. The relevant clauses are already reproduced in its entirety. On reading clause (1) of the consent Terms, it is obvious that parties agreed to invite decree requiring the defendant to pay sum of Rs.18 crores with interest thereon at the rate of 18% per annum from 90 days from the date of the Consent Terms on payment or realisation. I find substance in the argument canvassed on behalf of the plaintiffs that decree is passed in terms of prayer clause (1), which is in the nature of money decree. Clause (3) of the Consent Terms, in my opinion, as is rightly contended by the plaintiffs is an offer made by the defendant to the plaintiffs. Under the said clause the defendant were to offer specified premises to the plaintiffs; and on complying with the necessary obligations, under Clauses No.(ii) and (iii) thereof, which in turn was to be to the satisfaction of the plaintiffs, the offer could be accepted. In other words, it was open to the plaintiffs to accept the

offer on being satisfied about the compliance made by the defendant with regard to the requirements under clauses 3(a-i), 3(a-ii) and 3(a-iii). This position is made clear in the Consent Terms. The provision made in clause 3(b) provides that upon the Defendant complying with the provisions of clause 3 to the satisfaction of the plaintiffs, the Defendant shall and do procure and undertake to procure the sale and transfer of the specified premises with a right to construct 1/3rd of area of ground floor as loft floor in favour of the plaintiffs and its nominees from owners of the premises.

7. Clause 5(b) provides that on expiry of 90 days from the date of the Consent Terms and in the event if plaintiffs are not satisfied with the compliance by the Defendant of the provision of clause 3, the plaintiffs are entitled to encash the cheques without reference to the defendant and the defendant shall not raise and undertakes not to raise any dispute in respect thereof. It further provides that Defendant has further undertaken to have the cheques honoured and paid on first presentment thereof. It was expressly agreed that the cheques are all subject to realisation and the Defendant's obligation to make payment continues till the entire

sum of Rs.18 crores is actually received by the plaintiffs. From this provision made in the Consent Terms, it is clear that the plaintiffs were not obliged to accept the offer made in clause 3 by the defendant of specified premises in lieu of payment of Rs.18 crores, unless the plaintiffs were to be satisfied in all respects.

8. Even clauses 9(a) and 9(b) would clearly fortify the position that it is only when the plaintiffs were to accept the offer made by the defendant that the plaintiffs would avail of the offer under clause (3). The clause 9(b) provides that in the event the defendant failed to make payment of Rs.18 crores from the 90 days from the Consent Terms or in the event transfer of the premises not being completed in the one week of the plaintiffs being satisfied of the compliance by the Defendant of the provision of clause 3, the plaintiffs shall be entitled to execute the decree in terms of clause (1) forthwith and in/towards execution, to proceed against the premises mentioned in clause (3) and in clause (8) as also in any other manner permissible in law. On reading Consent Terms as a whole, I am in agreement with the submission made by Mr.Tulzapurkar that the offer made in clause

(3) was in lieu of payment of sum of Rs.18 Crores, which was decree passed in terms of Clause (1) of the Consent Terms. In other words, the second part of the Consent Terms cannot be invoked against the plaintiffs as a Consent Decree. Even assuming that the Defendant has complied with the obligations under clause 3(a-i), 3(a-ii) and 3(a-iii) referred to above, it is not possible for this court to answer the issue raised in the chamber summons at the instance of Defendant to mark the decree certified. For the view I have expressed earlier, it will not be necessary for me to consider the factual matrix of the case as to whether the defendant has or not complied with the obligations under clause 3(a-i), 3(a-ii) and 3(a-iii).

9. In my opinion, the Chamber summons taken out by the defendant will have to be dismissed with liberty to the defendant to take recourse to such remedy as may be permissible in law for enforcement of the agreement arrived at between parties under the Consent Terms.

10. Notice stands discharged accordingly.

11. Ordered accordingly.